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The Pharmacist and the Law

ABSTRACT OF LEGAL DECISIONS.

SALE OF POISON—EVIDENCE.—Action was brought against a druggist for the death of a boy, which it was claimed resulted from the substitution of bichloride of mercury for calomel. The defendant claimed that the boy died of typhoid fever. In the trial court verdict and judgment were given for the defendant. On appeal it was held that an instruction that if the boy had typhoid fever, but the jury believed that bichloride of mercury was administered to him, and that the poison caused or brought on his death, they should find for the plaintiff, substantially covered a request by the plaintiff to charge that, if the boy died of the combined effects of the disease and the poison, the plaintiff was entitled to recover. A physician testified that bichloride of mercury given to a typhoid patient would retard his recovery, and that in his opinion 2½ grains of that drug given to a typhoid patient would cause gastritis and gastric trouble, which would weaken the patient and cause symptoms of poison if taken inwardly. It was held that an answer to the direct question, "Would it aid the disease in killing the patient?" was properly excluded. The correct line of testimony was to develop the effect of the poison upon one who had typhoid fever. A pharmacist was permitted to bring into court samples of calomel and bichloride of mercury together with the reagent potassium iodide. An objection that the bichloride of mercury was in crytal form, and not in the powdered form like that sold by the druggist, and that the pharmacist was allowed to pulverize it before applying the reagent, was not sustained. Judgment for the defendant was affirmed.

Mann's Adm. v. Reynolds, Kentucky Court of Appeals, 150 *S. W.* 329.

SALES OF POISONS—INDICTMENT.—The West Virginia statute, Acts of 1911, chapter 16, makes it a felony to sell cocaine except on the prescription of a licensed physician. It was held that an indictment for selling cocaine under the act was defective because it did not aver that the sale was without the prescription of a physician. The defendant, it was said, may have had a prescription authorizing sale. The offense is not merely selling, but selling without a prescription; therefore the exception was a part of the definition of the crime and must be negatived.

State v. Weir, West Virginia Supreme Court of Appeals, 76 *S. E.* 138.

MANUFACTURING CHEMIST'S LIABILITY.—Action was brought against a firm of manufacturing chemists for the death of two horses alleged to have been caused by an intravenous injection of a solution of nuclein manufactured by the defendant, and prescribed by a veterinary surgeon employed by the plaintiff. There was nothing more to connect the defendant with the loss than an advertising circular of the remedy addressed to veterinarians, stating that it was intended especially for hypodermic use, and referring generally to a magazine article written by a reputable veterinarian describing his use of the preparation intravenously as well as hypodermically. An offer to show that the defendant subsequently changed the formula

by reducing the percentage of nuclein contained therein was held properly rejected.

Young v. Parke, Davis & Co., 49 *Va. Superior Court*, 29.

PURE FOOD LAW—CONFECTIONERY A FOOD.—In a prosecution for selling confectionery containing sulphur dioxide in violation of the Pennsylvania Pure Food Law, Act of May 13, (P. L. 520) it was held that the title of the act, "An act relating to food, defining food, providing for the protection of the public health and the prevention of fraud and deception by prohibiting the manufacture or sale, the offering for sale or exposing for sale, or having in possession with intent to sell of adulterated, misbranded or deleterious foods," etc., is sufficiently comprehensive to give notice of the prohibition against adding sulphur dioxide to confectionery. The word "food," it was said, is a general term, and applies to all that is eaten for the nourishment of the body, including any substance that is taken into the body which serves, through organic action, to build up normal structures or supply the waste of tissue; it includes candy, sweetmeats, preserves and other confectionery. The fact that the statute provides that sulphur dioxide may be used in quantities not detrimental to health in the preparation of dried fruits and molasses was held not to render it a violation of the Constitution as an improper discrimination. Nor is the act unconstitutional because it relieves retail dealers from prosecution where they sell under a guaranty signed by the manufacturer or wholesale dealer. A conviction may be obtained under the statute where it appears that the sulphur dioxide was added to gelatin in the bleaching process, and the gelatin was then added to other constituents to compose the confectionery which the defendant sold.

Commonwealth v. Pflaum, Pennsylvania Supreme Court, 84 *Atl.* 842.

MISBRANDING CHAMPAGNE.—In a prosecution for violating the Pure Food and Drugs Act, it was held that an indictment for misbranding champagne in violation of the Act was not invalid because of failure to allege a preliminary investigation by an officer of the Department of Agriculture, a notice to the defendants of their violation of the act, or that the defendants were afforded an offer to present evidence and be heard. Where there was evidence tending to show that the defendants sold in interstate commerce a domestic wine, artificially carbonated, under a label "Extra Dry Champagne," with words in French and a design calculated to induce a purchaser to believe he was buying a foreign and not a domestic product, it was held that they were guilty of misbranding in violation of the act.

Schraubstadter v. United States, Circuit Court of Appeals, 199 *Fed.* 568.

OLEOMARGARINE — LICENSE TAX—"MANUFACTURER."—In a prosecution under the Oleomargarine Act of 1886 for manufacturing oleomargarine without having paid the special tax therefor, it was held that the essential elements of the offense are the engaging in the business of manufacturing oleomargarine, the producing of such substance, and the attempt to defraud the United States, and an indictment alleging that defendants on a certain date, being persons engaged in carrying on the business of a manufacturer of colored oleomargarine at a specified place, did knowingly, etc., attempt to defraud the United States of a tax imposed on 120 pounds of colored oleomargarine, then and there produced by them, etc., was sufficient, without alleging its sale or removal for consumption. The statute does not declare it an offense to commit the fraud in any particular way, hence an indictment does not require to charge the manner in which the attempt was made. The statute was held to be applicable to one who did not manufacture white oleomargarine, and therefore was not a manufacturer within the definition contained in the original act, but who mixed white oleomargarine with artificial coloration so as to make it look like butter and thereby became a "manufacturer" within the definition as extended by the Act of May 9, 1902.

May v. U. S., Circuit Court of Appeals, 199 *Fed.* 42.

RESCISSION OF ORDER.—In an action for an alleged breach of contract for the sale of soda fountain, an order was given to the traveling salesman of the defendant, with a deposit of $25.00 for a fountain at the price of $300.00. The order expressly provided that it was subject to the approval of the home office. On receipt of it the defendant refused to accept it for several reasons, among others, that the price should have

been $350.00. The plaintiff refused to sign an order submitted to him at $350.00 and asked for the return of his deposit, which was made. Judgment for the plaintiff was reversed for the following reasons. The order providing in express terms that it was subject to the approval of the home office, it did not become a binding contract until it was approved and accepted. Where the person making such an order, upon being notified of its non-acceptance, demands and receives a repayment of the money forwarded therewith, he thereby rescinds his order, and cannot maintain an action thereon for damages for its non-acceptance.

Crowder v. Tolerton & Warfield Co., Nebraska Supreme Court, 138 *U. W.*, 151.

VERBAL REPRESENTATIONS EXCLUDED.—The purchaser of a soda fountain brought an action for breach of warranty after having kept the fountain for several months. He claimed that it did not come up to specifications, and charged that the carbonator was not of the kind described, and that the trimmings of the counter were white instead of green. The written contract contained the stipulation, "the sole authorized business of our agents is to solicit contracts on this printed form, and no agreement or representation will be recognized by us unless it is written hereon." It appeared that the purchaser rested his principal grievance, not on the ground that the carbonator differed from the specifications of the contract, but that it did not come up to certain verbal assurances of the seller's agent. It was held that such verbal assurances constituted no part of the contract, and could not be considered in an action for its breach. On the question of the trimmings, the evidence as to pecuniary injury was held too indefinite to be made the basis of any substantial recovery.

Simpson v. R. M. Green & Sons, North Carolina Supreme Court, 76 *S. E.* 237.

INTOXICATING LIQUORS—MANAGING DIRECTOR'S LIABILITY.—In a prosecution for maintaining a place where intoxicating liquors were illegally sold, bartered or given away, it was held that the fact that the defendant was a member of a corporation owning and operating certain drug stores where liquor was illegally sold, and that he assisted in directing the policies of each store, in naming their clerks and assistants and received a share of the profits therefrom made him subject to prosecution and conviction.

Rigrish v. State, Indiana Supreme Court, 99 *U. E.* 786.

INTOXICATING LIQUORS — EVIDENCE.—The South Dakota Political Code §2860, as amended, provides that it shall be unlawful for any registered pharmacist to sell or give away any intoxicating liquors whatever to be used as a beverage or drunk on the premises, and that any registered pharmacist who shall allow intoxicating liquors to be drunk upon the premises or in any room adjoining the premises, shall be fined on conviction. In a prosecution for violation of the statute it is held that the statute forbids the selling or giving of intoxicating liquors to be drunk as a beverage anywhere by a registered pharmacist, and also the selling or giving of such liquors to be drunk on the premises, as a beverage or otherwise. Under an information charging an illegal sale of intoxicating liquors to several persons jointly, the defendant, it was held, cannot be convicted of an illegal sale to but one of the persons named. A witness testified positively on his own personal knowledge to purchasing beer from the defendant, a registered pharmacist, to be drunk on the premises. The witness was contradicted by two other witnesses for the state, and his credibility was attacked by three apparently disinterested citizens. It was held that, while the appeal court might not find upon the evidence that the liquor was beer, it could not disturb a verdict of guilty, the jury being at liberty to believe the witness, notwithstanding his contradiction and impeachment.

State v. Julius, South Dakota Supreme Court, 137 *U. W.*, 590.

EJECTING A TENANT BY MEANS OF FORMALDEHYDE.—After an abortive attempt had been made by a landlord to regain possession of leased premises, the lessee, with a number of his employes, remained in the building during the night. In order to eject them the landlord caused a hole to be bored in the wall of the room where the lessee and his employes were dozing, and with the aid of a bicycle pump, injected about two quarts of liquid formaldehyde into the room. In an action for injuries the lessee claimed that, as a result of inhaling the poisonous gas, he became afflicted with an acute inflammation of the

throat and eyes, which after some days assumed a chronic condition. It was held that the landlord was liable for all damages resulting from his act.

Saros v. Avenue Theatre Co., Michigan Supreme Court, 137 *U. W.* 559.

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ABSTRACT OF U. S. TREASURY DECISIONS.

(T. D. 32950.) DRIED MINT.—In view of the decisions of the Board of United States General Appraisers, reported in G. A. 4292 (T. D. 20208), G. A. 5266 (T. A. 24173), Abstracts 23177 and 23178 (T. D. 30585), and Abstract 26276 (T. D. 31813), wherein it was held that crude thyme, marjoram and savory were entitled to admission free of duty as crude drugs under paragraph 559 of the tariff act, the treasury department is of opinion that dried mint in bottles is also entitled to admission free of duty as a crude drug under the said paragraph, the bottles being dutiable at the appropriate rate provided in paragraph 97 of the said act.

(T. D. 32965.) FRUIT ETHERS.—Merchandise known as "Sinalco Seele," made by a secret process, and used as a base for the manufacture of non-alcoholic drinks was classified for dutiable purposes as "fruit ethers, oils or essences" under paragraph 21 of the tariff act of 1909. The importers claimed that it should be classified as a "non-enumerated manufactured article" under paragraph 480 of the act. The Government claimed it to be dutiable as an alcoholic compound under paragraph 2 of the act. It was held that, the merchandise being, as imported, composed of 17.6 percent. of alcohol and 1.7 percent. of extract, the balance water, and the extract having a fruit aroma, it fell within paragraph 2 as an alcoholic compound or paragraph 3 as a chemical compound or mixture containing alcohol.—*U. S. vs. Chattanooga Brewing Co.*

(T. D. 1809.) ADULTERATED BUTTER.—The Internal Revenue Office does not accept as a precedent the case of United States v. 11,150 pounds of butter, Milton Dairy Co., 195 Fed. 657. The office will continue to assess the civil liability in every case where the moisture content is 16 percent. or over; and its purposes to proceed against the mahufacturer of butter which contains 16 percent. or more of moisture for his failure to have such butter properly marked, branded and stamped before it is sold or offered for sale. That will bring up the direct question of fact in each case and, even under the decision of the court in the Milton case—that 16 percent of moisture is not adulteration as a matter of law—(it being well known that in most cases of adulterated butter the moisture content runs up to 18 and 19 percent.), there will be a direct issue of fact to be passed on by a jury.

(T. D. 1810.) ADULTERATED BUTTER—METHOD OF SAMPLING.—The Internal Revenue Office has issued instructions that before sampling any suspected adulterated butter, officers should notify the manufacturer, owner, or holder of the proposed sampling, and accord to such person or representative the privilege of being present and securing similar samples at the same time, if so desired.

(T. D. 32975.) IMPORTATION OF WHITE PHOSPHOROUS MATCHES PROHIBITED.—The importation into the United States, on and after January 1, 1913, and the exportation after January 1, 1914, of white phosphorous matches is prohibited.

(T. D. 32891.) DRAWBACK ON SACCHARIN.—Drawback was allowed on saccharin manufactured by Fries Bros. of New York, from imported orthotoluolsufamid and potassium permanganate, proportioned to the relative values of the saccharin and various by-products obtained in the manufacture thereof.

(T. D. 32888.) DRAWBACK ON BENZOIN AND ALMOND LOTION.—T. D. 32180 providing for an allowance of drawback on benzoin and almond lotion manufactured by the Andrew Jergens Co. of Cincinnati, Ohio, with the use of domestic tax-paid alcohol was extended to cover sample bottles of the preparation.

(T. D. 32932.) DRAWBACK ON FLUIDEXTRACTS.—Drawback was allowed on fluidextracts, tinctures, and other pharmaceutical preparations manufactured by H. K. Mulford & Co. of New York, with the use of domestic tax-paid alcohol, the quantity of alcohol to be taken as a basis for payment of drawback to equal that actually contained in the exported articles without allowance for waste.

(T. D. 32944.) DRAWBACK ON SINKINA.—Drawback was allowed on Sinkina, manufactured by the Metropolitan Pharmaceutical Co. of New York, with the use of domestic tax-paid alcohol. In liquidation, the quantity

of domestic tax-paid alcohol which may be taken as the basis for payment of drawback may equal the quantity actually appearing in the preparation as exported, provided that in no case shall it exceed 12 percent. in volume of alcohol of 190 degrees proof.

(T. D. 32892.) DRAWBACK ON CHEWING GUM.—Drawback was allowed on "U-all-no mint chewing gum," manufactured by the Manufacturing Co. of America, Philadelphia, from refined sugar obtained from imported raw sugar, chicle and essence of mint.

The Bulletin Board

GEORGE M. BERINGER.

George Mahlon Beringer, president-elect for 1913-14, of the American Pharmaceutical Association, was born in the old district of Southwark of Philadelphia on February 3, 1860. He obtained his early education in the public schools of that city, graduating from the Central High School with the degree of A. B., and a standing meriting the award of a teacher's certificate. He developed special fondness for the study of chemistry and this led him to enter the employ of the firm of Bullock & Crenshaw on March 1, 1876, where he made the acquaintance of the late Thomas S. Wiegand, editor of the later editions of Parrish's Pharmacy, who assisted and guided him in his early studies in pharmacy. The strong friendship then established lasted until the decease of Mr. Wiegand.

In 1878, Mr. Beringer matriculated as a student in the Philadelphia College of Pharmacy, graduating in 1880, the subject of his thesis being "Caffeina."

Subsequently he engaged in laboratory work with Bullock & Crenshaw and later became manager of their retail department as well as an advisory and research chemist. Being employed during the day, he was unable to enter the Analytical Laboratory of the Philadelphia College of Pharmacy, and took, instead, an evening course with Dr. Henry Leffmann, the well known chemical expert.

At this time he became active in the organization of the Lyceum of the Ebenezer M. E. Church of Philadelphia, contributing literary and scientific essays and participating in debates, a training which proved to be of much value to him in his subsequent work.

In 1882 Mr. Beringer was married to Miss Estella F. Wolfe, of Camden, N. J., and removed to that city. In order to carry out more fully his experimental and research work, he fitted up a small laboratory at his residence, and here in the early hours of the morning and frequently the late hours of the night, he made his investigations.

After graduation from the Philadelphia College of Pharmacy, he continued his studies, chiefly along botanical and chemical lines, and in these he has been largely self-taught. Summer vacations were utilized for botanical excursions, and his herbarium is a good representation of local flora. He was one of the founders of the Philadelphia Botanical Club, and was its president for several years.

In 1892 he was elected director of the Microscopical Laboratory of the Alumni Association of the Philadelphia College of Pharmacy, and performed the duties of this position until the association turned the laboratory over to the Philadelphia College of Pharmacy in 1894.

Mr. Beringer remained with Bullock & Crenshaw until June 1, 1892, when he purchased the retail drug store of the late